

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1206 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
CHANDA @ SANJAY LAXMANBHAI PATEL

Versus

STATE OF GUJARAT  
-----

Appearance:

MS SUBHADRA G PATEL for Petitioner  
MR KT DAVE, AGP for Respondent No. 3  
-----

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Rajkot City, Rajkot, passed an order on August 3, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detainee under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration 8 cases registered against the detainee and came to a conclusion that the detainee is a "dangerous person" as defined under section 2(c) of the PASA Act. The authority considered the possibility of resorting to less drastic remedies in the form of proceedings under Section 56 (a) & (b) and Section 57 of the Bombay Police Act and ultimately came to a conclusion that resorting to other less drastic remedies it not possible as the detainee is required to be detained in order to prevent him immediately from continuing his illegal and anti-social activities.

#. The detainee/petitioner has challenged the order of detention on various grounds. However, Ms. Patel has restricted her arguments to the fact that the order suffers from the vice of non application of mind while considering the alternative less drastic remedy. He submitted that the authority has considered the possibility of resorting to proceedings under Section 57 of the Bombay Police Act. However, if the cases relied upon by the detaining authority are considered, they are all pending trial whereas for resorting to proceedings under Section 57, convictions are required and therefore, it has been wrongly considered. This reflects non-application of mind on the part of the detaining authority which would vitiate the order and therefore, the petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition. He submitted that the detaining authority has passed order after being subjectively satisfied about the need for immediate detention of the detainee to prevent him from continuing his illegal and anti-social activities.

#. Having regard to the rival side contentions, it appears that the order of detention suffers from the defect as canvassed by Ms. Patel. The detaining authority has taken into consideration Section 57 of the Bombay Police Act. This Section can be resorted to only if there is/are convictions for the offences under various Acts stated in Section 57 of the Bombay Police Act. In the instant case, all the cases registered against the detainee are pending trial and as such, there was no question of consideration under section 57 of the

Bombay Police Act. This reflects consideration of an irrelevant aspect.

#. Another aspect that reflects non-application of mind is that the petitioner has been labeled as "dangerous person" and the cases registered against the detenue are under Indian Penal Code. If the provision of Section 57(a) is considered, it does not call for punishment in two cases as has been observed by the detaining authority in the grounds of detention and therefore, the order suffers from another defect of non-application of mind also.

#. In view of the above, the detention order stands vitiated so also the detention and the petition deserves to be allowed on this ground.

#. The petition is allowed. The impugned order of detention dated August 3, 1999 is hereby quashed and set aside. The detenue - Chanda @ Sanjay Laxmanbhai Patel is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no order as to costs.

[A.L.DAVE, J.]

\*\*\*\*\*

pirzada/-